88-1854

UNITED STATES SUPREME COURT

OCTOBER 1988

RONALD W. DAVENPORT,

PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT

ON WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR

THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

RONALD W. DAVENPORT

IN PRO PER, WITHOUT COUNSEL

258 JONES

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MAY 1 1989

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QUESTION'S PRESENTED FOR REVIEW

1. If the Petitioner, or a private citizen, did not volunteer to file a tax return, does the Internal Revenue Service have lawful authority to assert their rules or procedure upon the Petitioner, or private citizen?
2. Is our tax system mandatory or voluntary?
3. If our tax system is mandatory could it be so without violating the Petitioner's constitutionally secured 4th and 5th amendment rights?
4. Are there statutes at-law which gives the Internal Revenue Service authority to simply claim jurisdiction over Petitioner, or private citizen, or must they prove their claim of jurisdiction?

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TABLE OF AUTHORITIES

Title 5 U.S.C. sec. 551 thru 706

Flora v. United States 362 US 145, 4 LE2d 623, 80 S Ct 630 (1960) pg. 641

McNutt v. General Motors Acceptance Corporation of Indiana Inc. 298 US 178, 80 LE 1135, 56 S Ct 780 (1936) pg. 1135

United States Constitution 4th and 5th Amendments

Title 28 U.S.C. sec. 1254 (1)

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OPINIONS BELOW

The opinion of the court of appeals (Appendix, infra, pp. App. 1-5) is not officially reported. The opinions of the Tax Court are also not officially reported (Appendix, infra, pp. 6-15).

JURISDICTION STATEMENT

The decision of the Court of Appeals for the Sixth Circuit was entered on February 3, 1989. No petition for rehearing was filed. Jurisdiction of this Court to review this case on a petition for certiorari rests upon 28 U.S.C. sec. 1254 (1). The appeal seeks direct application of the United States Constitution to this situation.

CONSTITUTIONAL PROVISIONS

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable

searches and seizures, shall not be violated... U. S. Constitution amend. IV.

No person shall ... be deprived of life, liberty, or property, without due process of law... U. S. Constitution amend. V.

STATEMENT

The Petitioner has challenged the jurisdiction of the Internal Revenue Service in the lower Courts, but those courts failed to acknowledge that challenge. It appears to Petitioner that in order to fall under the jurisdiction of the I.R.S. (Title 26 U.S.C.) one must first volunteer to file a tax return.

ARGUMENT

Petitioner could not find anywhere at-law, statutes that gives the Internal Revenue Service authority to

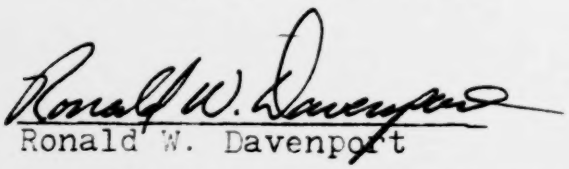
enforce their rules and procedure over him Further, in Flora v. United States, 362 U.S. 145 (1960), the Supreme Court decreed that "our tax system is based upon voluntary assessment and payment, not upon distraint" emphasis added. Also, the Internal Revenue Service must prove their jurisdiction pursuant to Title 5 U.S.C. sec. 551 thru 706, jurisdiction must be substantively proven. Also see McNutt v. General Motors Acceptance Corp. 298 U S 178 "...One who asserts federal jurisdiction has the burden of proving it..."

Petitioner has never waived any of his Constitutional Rights at any time, and claims those rights as guaranteed to him under the United States Constitution.

CONCLUSION

WHEREFORE, Petitioner respectfully requests and prays, that this Court grant Petition for Certiorari.

Respectfully Submitted,



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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 88-1581

RONALD W. DAVENPORT,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent,

DECIDED FEBRUARY 3, 1989

BEFORE: KENNEDY and NELSON, Circuit Judges; and PECK, Senior Circuit Judge.

This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the briefs and records, this panel unanimously agrees that oral argument is not needed. Fed. R. 34(a).

Petitioner initiated these actions in the Tax Court to contest the propriety of two notices of income tax deficiency. The Tax Court dismissed the petitions

for failure to state a claim. Judgment was entered for the Commissioner, and two $2500 sanctions against the petitioner were imposed under 26 U.S.C. sec. 6673.

On appeal, the parties have briefed the issues, petitioner proceeding pro se. Petitioner has filed a demand for jury trial, and an objection to the representtation of the respondent by the Justice Department.

Review of the record indicates that the Commissioner assessed over $30,000 in deficiencies and penalties against the petitioner for his failure to report taxes in 1981, 1982, 1983 and 1984. Davenport's petitions before the Tax Court essentially claimed that the IRS was without jurisdiction to assess taxes against him because he is a "Freeman" under the "Organic Constitution." Petitioner further asserted a blanket claim to the fifth amendment privilege against

divulging tax information.

Upon consideration, we find no error in the Tax Court's dismissal of the petitions for failure to state a claim. A petition before the Tax Court must contain specific facts which call into question the presumed correctness of the Commissioner's determinations of tax liability. See Lefebvre v. Commissioner, 830 F.2d 417, 419 (1st Cir. 1987) (per curiam); Taylor v. Commissioner, 771 F 2d 478, 479 (11th Cir. 1985)(per curiam). Davenport's petitions utterly fail to advance any argument that the Commissioner's deficiency notices contained factual errors or miscalculations. The constitutionality and jurisdiction of the federal tax system are well settled. See Pollard v. Commissioner, 816 F2d 603, 604 (11th Cir. 1987)(per curiam). Davenport's apparent reliance on the non-ratification of the sixteenth amendment is unfounded. See Sisk v. Commissioner,

791 F 2d 58, 60 (6th Cir. 1986). His fifth amendment argument is groundless, see Heitman v. United States, 753 F2d 33, 34 (6th Cir. 1984)(per curiam), as in his claimed right to a jury trial before the Tax Court. See Martin v. Commissioner, 756 F2d 38, 40 (6th Cir. 1985). All of petitioner's issues are clearly without merit. The record amply supports the Tax Court's entry of judgment and the imposition of damages pursuant to 26 U.S.C. sec. 6673.

Davenport's objection on appeal to the participation by the Justice Department on behalf of the respondent is also not well taken. The Justice Department is authorized to represent the Commissioner. 26 U.S.C. sec. 516.

We have consistently demonstrated our willingness to invoke Rule 38 of the Federal Rules of Appellate Procedure against litigants bringing frivolous "tax

protest" appeals. See, e.g., Schoffner v. Commissioner, 812 F.2d 292 (6th Cir. 1987)(per curiam); Martin, 756 F.2d at 40-41. We find the instant appeal warrants a Rule 38 award for respondent. In Schoffner, 812 F.2d at 294, a panel of the court adopted the figure of $1200 to be the appropriate measure of damages in similar cases.

Accordingly, Davenport's demand for a jury trial and his objection to the participation of the Justice Department are denied. The Tax Court judgment is affirmed pursuant to Rule 9(b)(5), Rules of the Sixth Circuit, and damages are assessed against petitioner under Fed. R. App. P. 38 in the amount of $1200.

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

No. 13917-87

RONALD W. DAVENPORT,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECIDED MAY 6, 1988

BEFORE: LEE M. GALLOWAY, Special Trial Judge.

On March 17, 1988, the Court entered an order granting respondent's motion to dismiss for failure to state a claim upon which relief can be granted and further ordered and decided:

(1) That there are deficiencies and additions to tax due from petitioner as follows: Year 1984, deficiency 10,136, sec. 6651(a)(1) 2,508.44, sec. 6653(a)(1) 506.80, sec. 6653(a)(2) 50 percent of the interest due on $10,033.76 ,

sec 6654 629.24, sec. 6661 2,508.44.

(2) That damages are due from petitioner which are hereby awarded to the United States in the amount of $2,500 pursuant to sec. 6673, Internal Revenue Code of 1954, as amended.

On April 5, 1988, the Court filed a document captioned Review of Decision, in which petitioner "hereby requests a Review of Decision on the above entitled action for the following reasons:

1. The Tax Court's main reason for granting respondents Motion to Dismiss is the last four pages of petitioners brief. The Tax Court must have intentionally ignored the 14 pages of case Law and supporting facts which preceded those four pages.

A review of the legal and the correspondence files in this case discloses that petitioner mailed by express

mail a package of documents on May 22, 1987, which were received by the Court on May 26,1987. Included in the package was a 4-page typed single-space document, signed and dated by petitioner, to which petitioner attached a dated and signed certification that he had mailed a copy to respondent. This document, to which was attached a notice of deficiency, was captioned by petitioner as Special Appearance Petition to Quash Deficiency Assessment for the Tax Year 1984. It was filed by the office of the clerk of this Court as a petition to contest respondents notice of deficiency determination. A separate signed document received and filed on May 26, 1987, was captioned Demand for Jury Trial. Petitioners request for jury trial was denied by the Court on June 4, 1987. The clerk's office also received on May 26, 1987, a document captioned Petitioner's Trial

Memorandum and Supporting Law. This document consists of 14 typed pages with a "CONCLUSION" on the signed 14th page, followed by four additional unsigned pages captioned LIMITED LIABILITY FOR THE PAYMENT OF DEBTS. The clerk's office filed this document in the correspondence file. In view of the fact the above document was not considered by the Court in the memorandum sur order supporting its order entered March 17, 1988, Petitioner's Trial Memorandum and Supporting Law, totaling 14 pages, plus petitioner's 4-pageaddendum entitled LIMITED LIABILITY FOR THE PAYMENT OF DEBTS was ordered filed on April 5, 1988 as petitioner's motion for reconsideration of findings or opinion under Rule 161. [1] Petitioner's Review of Decision was filed on April 5, 1988 as petitioner's motion to vacate or revise decision under Rule 162.

Upon due consideration of petitioner's motion for reconsideration of findings or opinion and petitioner's motion to vacate or revise decision, it is

ORDERED that petitioner's motion for reconsideration of findings or opinion filed April 5, 1988, is denied; and it is further

ORDERED that petitioner's motion to vacate or revise decision filed April 5, 1988, is denied.

[1]All section references are to the Internal Revenue Code of 1954, as amended, unless otherwise indicated. All Rule references are to the Tax Court Rules of Practice and Procedure unless otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

No. 13914-87

RONALD W. DAVENPORT,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent,

DECIDED MAY 6, 1988

BEFORE: LEE M. GALLOWAY, Special Trial Judge.

On March 17, 1988, the Court entered an order granting respondent's motion to dismiss for failure to state a claim upon which relief can be granted and further ordered and decided:

(1) That there are deficiencies and additions to tax due from petitioner as follows: Year 1981, deficiency $7,478 , sec. 6651(a)(1) $1,867.50, sec. 6653(a)(1) $373.90, sec. 6653(a)(2) 50 percent of the interest due on $7,478.00, sec.

6654 $573.69, sec. 6661 N/A ; Year 1982 deficiency 8,512, sec. 6651(a)(1) 2,128 , sec. 6653(a)(1) 425.60, sec. 6653(a)(2) 50 percent of the interest due on $8,512 , sec. 6654 828.72, sec. 6661 $2,128.00; Year 1983 deficiency 9,778, sec. 6651 (a)(1) 2,444.50, sec. 6653(a)(1) 488.90, sec. 6653(a)(2) 50 percent of the interest due on $9,778.00, sec. 6654 598.99, sec. 6661 2,444.50.

(2) That damages are due from petitioner which are hereby awarded to the United States in the amount of $2500 pursuant to section 6673, Internal Revenue Code of 1954, as amended.

On April 5, 1988, the Court filed a document captioned Review of Decision, in which petitioner "hereby requests a Review of Decision on the above entitled action for the following reasons:

1. The Tax Court's main reason for granting respondents Motion to Dis-

miss is the last four pages of petitioners brief. The Tax Court must have intentionally ignored the 14 pages of case Law and supporting facts which preceded those four pages.

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notice of deficiency determination. A separate signed document received and filed on May 26, 1987, was captioned Demand for Trial by Jury. Petitioner's request for jury trial was denied by the Court on June 4, 1987. The clerk's office also received on May 26, 1987, a document captioned Petitioner's Trial Memorandum and Supporting Law. This document consists of 14 typed pages with a "CONCLUSION" on the signed 14th page, followed by four additional unsigned pages captioned LIMITED LIABILITY FOR THE PAYMENT OF DEBTS. The clerk's office filed this document in the correspondence file. In view of the fact the above document was not considered by the Court in the memorandum sur order supporting its order entered March 17, 1988, Petitioner's Trial memorandum and Supporting Law, totaling 14 pages, plus petitioner's 4-page addendum entitled LIMITED LIABILITY FOR

THE PAYMENT OF DEBTS was ordered filed on April 5, 1988 as petitioner's motion for reconsideration of findings or opinion under Rule 161. [1] Petitioner's Review of Decision was filed on April 5, 1988 as petitioner's motion to vacate or revise decision under Rule 162.

Upon due consideration of petitioner's motion for reconsideration of findings or opinion and petitioner's motion to vacate or revise decision, it is

ORDERED that petitioner's motion for reconsideration of findings or opinion filed April 5, 1988, is denied; and it is further

ORDERED that petitioner's motion to vacate or revise decision filed April 5, 1988, is denied.

[1] All section references are to the Internal Revenue Code of 1954, as amended, unless otherwise indicated. All Rule references are to the Tax Court Rules of Practice and Procedure unless otherwise provided.